



Board of Adjustment



Agenda Numbers: 7 & 8
Case Numbers: BA-90015/ZA-90095
BA-90016/ZA-90060
Hearing Date: February 3, 2010

Appellant: Manuel Ruiz
3123 San Saulo SW
Albuquerque, NM 87105

Agent: R2 Consulting Services
12024 Paisano Ct. NE
Albuquerque, NM 87112

Applicant: Manuel Ruiz
3123 San Saulo SW
Albuquerque, NM 87105

Agent: N/A

Site Location: 3123 San Saulo Rd. SW

Zone Designation: R-1 Single-Family Residential

Recommendations: Denial

VICINITY MAP

Summary: These matters are two (2) appeals of the Zoning Administrator's previous denials of a variance of 4 feet to the required front yard setback distance (ZA-90060) and a variance of 4.25 feet to the required side yard setback distance (ZA-90095).

The appellant seeks authorization to allow the continued placement of an unpermitted "covered entry" 16 feet from the front property line, as well as an unpermitted carport attached to the existing house at 8 inches from the west side property line

These matters were deferred by the Board of Adjustment from their December 2009 hearing to allow the appellant an opportunity to provide additional information, clarify particular aspects of the existing development, and explore some possible alternatives for the existing carport and covered porch.

Staff Contact: Brennon Williams, Zoning Administrator

Attachments:

1. BA's Deferrals (December 7, 2009)
2. Appeal applications
3. ZA's Notices of Decision (September 15, 2009)
4. Original applications with provided site plan
5. Agency comments for ZA application
6. Site photographs, aerial photograph, zone atlas page

BA-90015/ZA-90095

R2 Consulting Services, agent for Manuel Ruiz, appeals the Zoning Administrator's decision in denying a variance of 4.25 feet to the required 5-foot side yard setback distance on Tract 97G2, MRGCD Map #39, located at 3123 San Saulo Rd. SW, zoned R-1, and containing approximately .116 acres. (K-12) (Original request submitted by Manuel Ruiz) (DEFERRED FROM THE DECEMBER 2, 2009, HEARING)

BA-90016/ZA-90060

R2 Consulting Services, agent for Manuel Ruiz, appeals the Zoning Administrator's decision in denying a variance of 4 feet to the required 20-foot front yard setback distance on Tract 97G2, MRGCD Map #39, located at 3123 San Saulo Rd. SW, zoned R-1, and containing approximately .116 acres. (K-12) (Original request submitted by Manuel Ruiz) (DEFERRED FROM THE DECEMBER 2, 2009, HEARING)

BACKGROUND

The Requests

The appellant is requesting that two (2) previous determinations by the Zoning Administrator in denying a 4.25-foot side yard and 4-foot front yard variances be overturned. The property owner seeks authorization to allow the continued placement of an unpermitted carport attached to the west side of the existing single-family dwelling at 8 inches from the adjacent property line, as well as the continued placement of an unpermitted "covered entry" addition at 16 feet from the front property line.

The Property

The subject site is located at 3123 San Saulo Rd. SW, zoned R-1, and is approximately .116 acres in area. The property is currently developed with a single-family dwelling and an accessory building. Additionally, the owner has made application to make an addition to the rear of the existing dwelling (BRBP-90091). A final determination on that building permit is dependent upon a final decision regarding the zoning issues.

The Hearing

The original request was presented at the Zoning Administration hearing held on September 8, 2009. Manuel Ruiz, owner of the subject property, presented the request. Mr. Ruiz acknowledged that the existing additions – a front porch added a year ago, and a carport added ten years ago – were constructed without the required permits and approvals from the county. However, he testified that based on his extensive construction experience, he was confident that the work was completed to meet current building code requirements.

When asked why permits were not secured prior to construction of these additions, Mr. Ruiz indicated that he was not aware that permits were required, but reinforced his willingness to do what was necessary at this time to allow the existing additions to remain on the site. He also stated that he felt the variance proposals met the criteria for approval because the area was an "old neighborhood", there were no curbs or sidewalks in the immediate vicinity, and that it was difficult to determine the exact location of the affected property lines.

The Decisions

The Zoning Administrator denied the requests based on findings that the criteria for approval as outlined in the zoning ordinance had not been met. Specifically, the arguments for approval did

not indicate any peculiar, exceptional, and unusual characteristics possessed solely by the subject site; but rather the age of the neighborhood, the lack of curb and gutter, and a perceived difficulty in determining the exact location of property lines were features common to all other lots in the area.

Additionally, the applicant did not address how the proposed variances were limited to the extent necessary to allow reasonable use of the land. Although it was clear that the property owner did not wish to modify or remove either of the unpermitted additions because of the financial expenditure associated with doing so, the existence of a single-family dwelling and accessory building currently on the site inherently proved that the property could be used “reasonably”, permissively, and consistent with the intent and spirit of the zoning ordinance if the setback issues were corrected.

Furthermore, a cursory review by the Zoning Administrator of the corresponding Zone Atlas page did show that the subject site was noticeably smaller in size than other properties along the north side of the street, but it was also apparent that the other lots across the street, immediately to the west, and north of the subject site were similar – if not identical – in size and shape to the subject property. While this “size” argument was not raised by the applicant, it is important to note that these other lots are subject to the same limitations for building placement as the subject site. This fact reinforces the existence of a similar standard for the neighborhood, rather than any claims of exclusive distinctiveness for approval of the variances.

APPLICABLE REGULATIONS

Comprehensive Zoning Ordinance of Bernalillo County.

Section 9. R-1 Single-Family Residential Zone.

- A. The regulations set forth in this section or set forth elsewhere in this ordinance, when referred to in this section, are the regulations in the R-1 Residential Zone. The purpose of this zone is to provide for the development of single-family homes on lots not less than three-quarters [of an] acre in area, except that where community water and sewer facilities are made available, the lot size may be reduced consistent with development densities in the Albuquerque/Bernalillo County Comprehensive Plan. The regulations provide for the health, safety and welfare of the residents.
- B. Use Regulations. A building or premises shall be used only for the following purposes, all uses customarily incidental to the building or premises shall be maintained on site:
 - 1. Prohibited Uses. The following uses are prohibited in this zone:
 - a. The open storage of inoperative vehicles or auto parts;
 - b. The open storage of trash or junk;
 - c. The open storage of large appliances;
 - d. Any use not designated a permissive use or conditional use in this zone, unless otherwise authorized by this Code; or
 - e. Any use not recognized as customarily incidental to a permitted use in this zone.
 - 2. Permissive Uses:
 - a. Agricultural activity, including truck gardening and nurseries, fur bearing animal farm, the raising of poultry or rabbits, dairy farming, livestock grazing, feeding, and the raising of livestock on lots containing three acres or more. On lots of less than three acres, there shall be at least 10,000 square feet of lot area for each cow or horse, and/or at least 4,000 square feet of lot area for each sheep, pig, or goat, provided that any building, pen, or corral where such animal is located is at least 20 feet from

- any existing dwelling unit. Stands for the display or sale of home-raised agricultural products, including poultry or rabbits raised on the premises.
- b. One single-family dwelling or H.U.D. Zone Code II manufactured home per lot.
 - c. Accessory building, structure, or use customarily incidental to the above uses, such building or structure shall be limited to an area of 600 square feet or less.
 - d. Noncommercial library, museum, and art gallery.
 - e. Recreational vehicle or boat storage in the rear yard when such recreational vehicle or boat is not to be used as accessory living quarters, and is not connected to utilities, other than temporarily to a source of electricity. Recreational vehicle used for dwelling purposes served only by electricity for lighting purposes, the use of such recreational vehicle shall be limited to a maximum of two weeks in any calendar year.
 - 1. In the event where rear yard access is not available, outside parking in the front yard is allowed, provided:
 - (a) The body of the recreational vehicle or boat is at least 11 feet from the front property line.
 - (b) No part of the unit extends onto the public right-of-way.
 - (c) A corner lot is always deemed to have reasonable access to the rear yard; a fence or wall is not necessarily deemed to prevent reasonable access.
 - f. Signs not exceeding eight square feet in area pertaining to the lease, hire, or sale of a premises or sale of home-raised products, provided there shall be no more than one such sign on each lot and provided further that, if illuminated, the source of such illumination shall be nonoscillating and nonflashing.
 - g. Parking incidental to uses permitted in this zone, provided all vehicles which are not parked inside a building are operative and are not wholly or partially dismantled.
 - h. Home occupation.
 - i. Concealed Wireless Telecommunications Facility, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - j. Wireless Telecommunications Antenna located on a public utility structure, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - k. Amateur Radio Antenna/Tower up to 65 feet as measured from grade.
 - l. Garage or yard sale, provided:
 - 1. No more than four events are allowed at a given dwelling in any calendar year. The duration of the garage or yard sale shall not exceed three consecutive days.
 - 2. No items shall be purchased for a garage or yard sale for the purpose of resale; items shall be of the type normally accumulated by a household.
 - 3. One non-illuminated, on-premise sign, not exceeding four square feet in area shall be permitted. The sign shall pertain to the garage or yard sale only and shall be permitted only for the three-day period of the sale.
3. Conditional Uses. The following uses may be permitted if approved by the Zoning Administrator in accordance with the procedures and under the conditions set out in the administrative Section of this ordinance with additional requirements deemed necessary to safeguard the best interest of the adjoining property, neighborhood and the community.
- a. Accessory building or structure in excess of 600 square feet in area and incidental to the uses listed under Section 7.B.1. and 7.B.2.
 - b. Amateur Radio Antenna/Tower 65 to 100 feet as measured from grade.
 - c. Church and incidental facilities.
 - d. School.
 - e. Day Care Center.

- f. Family Day Care Home.
 - g. Temporary festivals, circuses, carnivals or activities in a tent, provided that the use or activity meets the following requirements:
 - (1) The minimum lot size per use or activity shall be five acres.
 - (2) All required parking shall be located on the same site with the activity or use.
 - (3) The use or activity shall be at least two miles from the nearest conforming residential use.
 - (4) Prior approval of the proposed use or activity must be obtained from the County Sheriff, County Fire Department, County Environmental Health, County Public Works, City of Albuquerque Air Pollution Control, and Albuquerque Metropolitan Arroyo Flood Control Authority or their authorized representative.
 - (5) The hours of operation, shall be between 6:00 a.m. and 8:00 p.m. This includes the time of erection and dismantling.
 - (6) The use or activity shall be limited to three days in one calendar year.
 - (7) No permanent structures shall be erected.
 - (8) Temporary fencing may be erected, and shall be removed within 24 hours after the activity.
 - h. Real estate sales office and real estate signs exceeding the limitations in Subsection 8.B.(1).f. above in connection with a specific development for a period of not more than two years.
 - i. Recreational facility (nonprofit) such as swimming pools or tennis clubs on sites containing not less than one acre.
 - j. Temporary storage building or yard for equipment, material or activity incidental to a specific construction project but not to exceed one year, unless the time is extended by the Zoning Administrator.
 - k. Mobile home used as a dwelling (with connections to any utilities) during construction of a dwelling on the same premises, provided such use shall be limited to a maximum period of 24 months.
 - l. One mobile home for a three-year period in addition to an existing single-family dwelling or mobile home on a lot provided it complies with the following requirements:
 - (1) The mobile home may be used only by members of the immediate family for the purpose of providing assistance to those members of the family who are elderly, ill, mentally or physically disabled as attested by a licensed physician.
 - (2) The mobile home shall be connected to water and sewage disposal facilities approved by the Department of Environmental Health.
 - (3) The mobile home must be placed on the property in conformance with the setback requirements and located at least 15 feet from any structures on the same or on adjoining property.
 - (4) Placement of a mobile home on the property will not seriously conflict with the character of the area or be detrimental to the values of surrounding properties.
 - m. Nonprofit animal facility.
 - n. Park.
 - o. Home occupation where the business includes visits to the site from clients, customers, patients, patrons, or similar individuals. Such home occupations may allow for employment of one non-family member and may be approved for a period of time not to exceed three years.
- C. Height Regulations. Buildings and structures shall not exceed 26 feet or 2 1/2 stories in height, except as provided in The Supplementary Height and Area Regulations Section of this ordinance.

D. Area Regulations:

1. Minimum Lot Area and Lot Width. Every lot shall have a minimum area of not less than three-quarters [of an] acre and a minimum lot width of 60 feet, except that where community water and sewer facilities are available, the lot area may be decreased to 8,000 square feet if located in the Developing, Established or Central Urban Areas, or 14,520 square feet if located in the Semi-Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan.
2. Front Yard.
 - a. There shall be a front yard having a depth of not less than 20 feet except as provided in the Supplementary Height and Area Regulations Section of this ordinance.
 - b. Where lots have double frontage, the required front yard shall be provided on both streets.
3. Side Yard:
 - a. Except as hereinafter provided in the following paragraph and in the Supplementary Height and Area Regulations Section of this ordinance, there shall be a side yard on both sides of a building the aggregate width of which shall be not less than 14 feet, provided, however, that neither such yard shall be less than six feet in width.
 - b. Wherever a lot of record, at the effective date of this ordinance, has a width of less than 60 feet, each side yard may be reduced to a width of not less than ten percent of the width of the lot, but in no instance shall it be less than three feet.
4. Rear Yard. Except as hereinafter provided in the Supplementary Height and Area Regulations Section of this ordinance, there shall be a rear yard having a depth of not less than 15 feet.

- E. Parking Requirements. Off-street parking for all uses must be provided in accordance with the regulations set forth in the Off-street Parking, Loading and Unloading Regulations Section of this ordinance.

Agency Comments

No adverse comments were received from other county agencies reviewing the front yard variance proposal (ZA-90060), but the Bernalillo County Public Works Division did indicate that drainage from the carport "must not impact neighbors" for ZA-90095 (side yard setback variance).

INFORMATION SUBMITTED FOR THE APPEAL

The appellant bases their appeals on the existing substandard area of the subject site and the parcel to the west, arguing that this feature creates an exceptional characteristic for the property.

ANALYSIS OF SUBMITTED MATERIAL

Staff concedes that the existing area of the subject site is less than that required by the zoning ordinance (ref. Sec. 9.D.1.), but disagrees that this creates a unique characteristic allowing for the approval of the appeals. First, the existing lot sizes are legally nonconforming to current requirements, as the county's Zone Atlas from 1973 – implemented with the zoning ordinance and including the current lot size standards – clearly shows the two existing parcels in their current configurations. This is significant because the regulations addressing nonconformance in the zoning ordinance fundamentally acknowledge that the existing, substandard size of the subject property is not an unusual feature; but rather, is a somewhat common characteristic

affecting thousands of R-1 properties throughout the county that do not meet the current standards, but were legally established and are afforded particular protections.

These recognizable aspects of nonconformance are further compounded by the appellant's own admission that the property immediately west of the subject site is similar in its area and width (4th paragraph, 3rd sentence). Clearly, if comparisons of similarity can be made to an adjacent lot, the characteristics of the subject site cannot be considered unique or exclusive to the neighborhood as is required by the ordinance. Moreover, staff agrees that the lot to the west similar in size and shape, but further notes that multiple lots across the street to the south, as well as behind the property to the north, possess analogous characteristics with the subject site. With all of these similarities, claims of distinction seem doubtful, and the determination of variance approvals unlikely in accordance with the standards of the ordinance.

Perhaps most importantly, variances are to be granted sparingly and limited in their extent to allow a property owner privileges and rights that are enjoyed by others that would otherwise be denied from the owner without the requested approval. All residential property owners are subject to the specific limitations on building placement and setback requirements independent of the overall size of their individual property. Claims that a lot is smaller in area than "most" other properties is not sound justification for variance approval, as this argument infers that "some" other properties are the same size (or smaller). Additionally, the ambiguous description (i.e., "most") used to compare the subject site to other properties is in contrast to the ordinance's specific and strict standard that variances are only to be granted to their necessary extent. Approximations and rough estimates jeopardize declarations for approval of the requests. The rigorous criteria for authorization as established by the ordinance is not meant to dissuade property owners from seeking administrative relief to their development difficulties, but rather, the precise and meticulous standards for approval are in place to clearly establish the benchmark that should be used in judging these types of requests.

Variances are not intended to correct or "make legal" development that has been constructed incorrectly, improperly, or mistakenly. Problems that a property owner has either created themselves or inherited through purchase cannot be made right through the granting of a waiver to the required standard. Commonly referred to as a "self-created hardship", these difficulties bear no substantiation for approval.

ANALYSIS SUMMARY

CRITERIA	APPEAL INFORMATION	STAFF ANALYSIS
Property possesses peculiar, exceptional, and unusual circumstances?	- The subject site is less than the current area standard for R-1 lots.	- The existing .116 acres (5,053 sq. ft.) of the subject site is legally nonconforming to current standards, and as such, is afforded specific protections to allow (by right) for development to occur on the site.
The noted peculiar, exceptional, and unusual circumstances are not generally found within the locality or neighborhood concerned?	- The subject site is less than the current area standard for R-1 lots.	- The corresponding Zone Atlas page shows the property immediately to the west of the subject site as being very similar in size and shape to the subject property, as well as lots to the north and south of these properties. These other properties indicate a likeness to, and commonality of, sites of these areas and dimensions within the immediate area.

The granting of the variance is to the extent necessary to allow the owner reasonable use of the land?	- This standard has not been addressed in the appeals.	<ul style="list-style-type: none"> - Arguments that the subject lot is smaller than “most” in the area does not specifically denote area differences with comparable lots; other tracts to the west, north, and south of the property appear to be very similar – if not identical – in size and shape. - Reasonable use can be determined and adequately demonstrated by the existence of the single-family dwelling on the site. Proper development (i.e., meeting applicable setback requirements) can occur and is shown by other properties throughout the county with the same zoning designation that meet these standards. - The sole basis for the requested variances is an attempt to correct a self-created hardship.
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Updated Information and Analysis

For February 3, 2010

The appellant was asked by the Board of Adjustment at their December 2009 hearing to accomplish the following tasks related to the appeals:

1. Provide additional engineering information concerning the feasibility of relocating the support posts for the carport in order to meet applicable setback standard while still sustaining the roof of the structure;
2. Obtain information on the methods necessary to meet county fire-rating standards for the carport;
3. Clarify the exact distance between the front porch and the front property line;
4. Provide additional justification for the appeals as outlined by the zoning ordinance; and
5. Clarify whether or not gutters exist on the side of the carport adjacent to the next door property (if not, the commission recommends that gutters be installed).

As instructed by the board, consultation with the agent regarding the proposals has shown that the necessary measures for continued consideration have been achieved. Specifically, it has been determined that relocation of the support posts for the carport cannot be accomplished to meet the required setback distances while still maintaining the structural integrity of the building. Essentially, the pre-engineered design of the carport establishes its ability to meet universal building standards ensuring strength and consistency. Moving the posts and modifying the carport will compromise this design. As a result, it has been recommended that the carport not be structurally modified or altered.

However, discussions with county fire and building officials concerning the fire-rating methods for the carport were a bit more fruitful. The support posts, unable to be relocated without compromising the carport, and the ceiling of the structure can be covered with 5/8-inch exterior

gypsum board (sheet rock) and stuccoed to ensure the recommended fire rating. Although the carport will continue to be located within the setback area, these additional measures seem to address the board's concerns about life, health, and safety protections.

Inquires regarding the exact location of the covered porch from the front property line seem to indicate that the distance previously noted (approximately 16 feet) was measured from the overhang of the porch, not to the support posts. The difference in these two measurements – about 18 inches – results in a necessary front yard variance of just 2.5 feet as compared to the 4 feet previously requested. Additionally, it has been confirmed that the length of the carport immediately adjacent to the next door property to the west is equipped with a rain gutter, thereby preventing water from improperly crossing onto neighboring sites.

Finally, the appellant reiterates the existing unique characteristics of the subject site, including the unusual size and shape of the property as compared to other lots on the same street, as well as conclusions mentioned by board members at the hearing from December regarding the age of the neighborhood and existing development of area properties. It is now argued that these combined features clearly show the need to allow the continued placement of the existing carport and covered porch.

CONCLUSION

Updated Conclusion

For February 3, 2010

As requested by the Board of Adjustment in December 2009, it appears to staff that the requested steps outlined at the public hearing have been accomplished and that the additional information has been provided.

From December 2009

The Zoning Ordinance authorizes the Board of Adjustment to hear and determine appeals from the decisions of the Zoning Administrator in denying applications for variation from the requirements of the ordinance. However, based on the information provided with the appeals, as well as consideration of the materials and testimony provided for the original applications, staff respectfully submits this matter to the BA with the following recommendations:

RECOMMENDATIONS

Denial of BA-90016/ZA-90060, thereby upholding the previous determination of the Zoning Administrator; and

Denial of BA-90015/ZA-90095, thereby upholding the previous determination of the Zoning Administrator.

Brennon Williams
Zoning Administrator